

ORDINANCE NO. 12-01

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, SUPPLEMENTING ORDINANCE NO. 03-15; AUTHORIZING THE ISSUANCE OF A SERIES OF SEWER SYSTEM REVENUE BONDS FOR THE PURPOSE OF FINANCING SEWER PROJECTS ORIGINALLY FUNDED THROUGH THE STATE OF FLORIDA DEPARTMENT OF EMERGENCY MANAGEMENT AND PAYING COSTS OF ISSUANCE RELATED THERETO; PROVIDING FOR THE PAYMENT OF SUCH SEWER SYSTEM REVENUE BONDS FROM NET REVENUES OF THE SEWER SYSTEM OF THE CITY; AUTHORIZING AN AMENDMENT TO THE RESERVE ACCOUNT REQUIREMENT UPON CONSENT OF A MAJORITY OF BONDHOLDERS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA:

SECTION 1. AUTHORITY FOR THIS ORDINANCE. This Supplemental Ordinance is enacted pursuant to chapter 166, part II, Florida Statutes, and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby ascertained, determined and declared that:

(A) On September 21, 1999, the City Commission, as the governing body of the City of Key West, Florida (the "Issuer"), duly adopted Resolution No. 99-346 (the "1999 Resolution"), which authorized the issuance of the Issuer's Sewer System Revenue Bonds in one or more series in an amount not to exceed \$23,000,000 to finance the cost of design, permitting, acquisition, construction, and reconstruction of improvements to the Sewer System.

(B) The issuance of said bonds was subject to a bond referendum held on November 2, 1999, wherein the qualified electors of the Issuer approved the issuance of said bonds (the "1999 Referendum").

(C) Following Hurricane Irene, on February 9, 2000, the Issuer received a grant through the State of Florida Department of Emergency Management ("FDEM") Public Assistance FEMA Funds (FEMA Disaster No. 1306-DE-FL) to finance certain capital improvements to the Sewer System (the "FEMA Grant"). The Issuer completed said capital improvements in November, 2002.

(D) The Issuer underwent an audit of the FEMA Grant. On January 26, 2004, the Issuer received official notification de-obligating the FEMA Grant on the grounds the damage to the Sewer System (as defined in the Original Ordinance) was preexisting and not a result of Hurricane Irene.

(E) On September 28, 2011, the Issuer received a demand letter from FDEM

requesting reimbursement of \$6,268,629.46 of the FEMA Grant.

(F) The Issuer deems it necessary and in the best interests of the Issuer and the residents thereof to authorize the issuance of sewer system revenue bonds for the purpose of financing sewer projects originally funded through FDEM.

(G) Ordinance No. 03-13 of the Issuer, duly enacted on June 17, 2003, as supplemented and amended (the "Original Ordinance"), provides for the issuance of Additional Parity Obligations (as defined in the Original Ordinance) upon compliance with certain requirements therein.

(H) The principal of and interest on the sewer system revenue bonds shall be payable solely from the Net Revenues (as defined in the Original Ordinance) of the Sewer System.

SECTION 3. AUTHORIZATION OF BONDS. The issuance by the Issuer of not exceeding \$6,400,000 Sewer System Revenue Bonds (the "2012 Bonds"), for the purpose and secured as specified above; to be dated, to bear interest at a rate or rates not exceeding the maximum legal rate per annum, to be payable, to mature, to be subject to redemption and to have such other characteristics as shall be provided by subsequent resolution of the City Commission prior to their delivery; is hereby authorized. The City Commission may adopt a specific bond resolution (including any resolutions supplemental to the bond resolution), supplemental to this ordinance, which sets forth the fiscal details of the 2012 Bonds and other covenants and provisions necessary for the marketing, sale and issuance of the 2012 Bonds.

SECTION 4. AMENDMENT TO TAKE EFFECT UPON CONSENT OF THE REGISTERED OWNERS OF NOT LESS THAN A MAJORITY OF THE OUTSTANDING BONDS. The following amendment to the Original Ordinance will take effect at such time as the written consent of the Registered Owners of fifty-one percent or more in principal amount of the Bonds so affected and then outstanding is obtained. BY ACCEPTANCE OF THE 2012 BONDS, EACH REGISTERED OWNER THEREOF IS DEEMED TO HAVE CONSENTED TO THE PROSPECTIVE AMENDMENT CONTAINED IN THIS SECTION. Section 17(B)(3) of the Original Ordinance is hereby amended by adding a new paragraph to the end as follows:

The Issuer may also establish a separate subaccount in the Reserve Account for any series of Bonds and provide a pledge of such subaccount to the payment of such series of Bonds apart from the pledge provided herein. To the extent a series of Bonds is secured separately by a subaccount of the Reserve Account, the Registered Owners of such Bonds shall not be secured by any other moneys in the Reserve Account. Moneys in a separate subaccount of the Reserve Account shall be maintained at a level applicable to such series of Bonds secured by the subaccount as designated by the Supplemental Ordinance authorizing such series of Bonds as the Issuer deems appropriate, provided such level may not exceed the Reserve Account Requirement for such series of Bonds. Moneys deposited into the Reserve Account to replenish withdrawals therefrom shall be

deposited in the Reserve Account and the separate subaccounts in the Reserve Account on a pro rata basis.

Further, a series of Bonds may be issued without being secured by the Reserve Account or any subaccount therein to the extent so provided by a Supplemental Ordinance.

SECTION 5. REPEAL OF INCONSISTENT PROVISIONS. All ordinances, resolutions or parts thereof in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 6. ORIGINAL ORDINANCE TO CONTINUE IN FORCE. The Original Ordinance and all the terms and provisions thereof, are and shall remain in full force and effect except as may otherwise amended and supplemented hereby.

SECTION 7. EFFECTIVE DATE. This ordinance shall take effect immediately upon its final passage and adoption.

Read and passed on first reading at a regular meeting of the City Commission held on this 15<sup>th</sup> day of November, 2011.

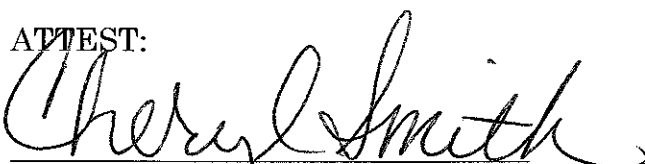
Read and passed on final reading at a regular meeting held this 3<sup>rd</sup> day of January, 2012.

Authenticated by the presiding officer and Clerk of the Commission on the 4<sup>th</sup> day of January, 2012.

Filed with the Clerk on January 4, 2012.

  
\_\_\_\_\_  
Craig Cates, Mayor

ATTEST:

  
\_\_\_\_\_  
Cheri Smith, City Clerk



## THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

### EXECUTIVE SUMMARY

**TO:** Jim Scholl, City Manager  
E. David Fernandez, Asst. City Manager

**FROM:** Jay Gewin, Utilities Manager

**DATE:** December 14, 2011

**SUBJECT:** Approving a Bond Resolution and Ordinance to Authorize the City of Key West to Issue \$6,400,000 in Sewer System Revenue Bonds to Finance Sewer Projects Originally Funded Through the State of Florida Department of Emergency Management, Including Paying Costs Relating to Loan Issuance.

#### ACTION STATEMENT:

This resolution and accompanying bond ordinance will authorize the City of Key West to authorize \$6.4 million in sewer system revenue bonds, series 2011, to finance sewer projects originally funded by the Florida Department of Emergency Management (FDEM). This resolution and ordinance will also allow the City to pay the costs relating to securing the loan agreement.

City Staff and Public Financial Management, Inc., the City's Financial Consultant, both recommend executing a 15-year loan with Branch Banking and Trust Company (BB&T) at a 2.65% interest rate.

#### BACKGROUND:

Hurricane Irene hit Key West on October 15, 1999 dumping approximately 9 inches of rain on the island in a 24 hour period. Representatives of the Florida Department of Emergency Management met with City Staff and wrote project worksheets for funding repairs on January 28, 2000 after background information was provided by the City.

\$7,027,292 in FEMA funding was obligated to the City on February 9, 2000 following their review and a conference call with the Governor's Office. Based on these approvals, the City initiated construction projects to repair our sewer

*Key to the Caribbean - Average yearly temperature 77° F.*

MEMORANDUM

system in Sewer Districts F & G on July 7, 2000.

FEMA conducted an audit of the sewer project on September 5, 2003. After their review, the \$7,027,292 in funds was de-obligated January 26, 2004. This meant that the City would be required to repay the state and federal share of \$6,268,629.46. A primary reason for FEMA de-obligating the funds was their opinion that the sewer system was already damaged prior to the hurricane.

The City strongly objected to this de-obligation of FEMA funds, and filed appeals on January 30, 2004 and April 25, 2005. They were both denied.

The City enlisted the assistance of U.S. Representative Ileana Ros-Lehtinen, and also utilized our federal and state lobbyists. However, the position of FEMA and the Florida Dept. of Emergency Management remains unchanged. They are demanding payment of the full \$6,268,629.46. Failure to pay this sum could result in the City being at risk for losing future funding from FEMA for recovery projects resulting from hurricanes or other disasters.

Therefore City Staff firmly believes that we have exhausted all efforts trying to lobby the issue further, and it is now time for the City to resolve this debt in a prompt manner.

#### **PURPOSE & JUSTIFICATION:**

If the City were to pay the full amount of \$6,268,629.46 all at once, it would have the significantly negative impacts of decimating our sewer fund reserves, resulting in cuts to our capital program and significant future rate increases to ensure sufficient fund balance to operate the wastewater treatment system.

Staff therefore believes that it is in the City's best interest to secure a loan to cover the amount of funds that are owed. This will minimize the negative impact to sewer fund reserves and rates for our customers. We have already programmed a \$527,378 payment in the current and extending 19 future years of the rate model in anticipation of resolving this debt to FEMA.

The 15-year loan that is being recommended by City Staff and the City's Financial Consultants would result in annual payments between \$550,000 and \$555,000. This is close enough to the figure we have already budgeted to confirm this 15-year loan will not impact future rates.

The City has also confirmed from our bond counsel that the original voter approval for sewer bonds in 1999 could authorize us to secure this loan to resolve this debt with FEMA. The sewer projects constructed de-obligated by FEMA is within the scope of work detailed in the bond referendum.

Our bond counsel has gone out for bid to secure the lowest rate obtainable for a loan of \$6.4 million so that we can re-pay the debt in full, and to cover the fees for bond counsel and for the financial services consulting required to secure and obtain the loan for the City. The annual payment for this loan will be incorporated within the future sewer rate models. Please see the report from Public Financial Management, Inc. which details the bid process and their recommendation.

Upon the City's request, BB&T has removed the 1% prepayment penalty after the first 7.5 years of the 15-year loan. Previously, a 1% prepayment penalty would have been in effect throughout the entire length of the loan.

City Staff and our financial analyst are recommending against selecting the slightly-lower interest rate loan proposals from JP Morgan Chase and SunTrust Bank because they include onerous provisions that would allow either to raise the interest rate resulting from factors beyond the City's control. City Staff and our Financial Analyst both believe that the minimal annual savings (approximately \$7,000 per year) under the JP Morgan and SunTrust proposals is not worth the risk of having our interest rates increased without our ability to object.

First State Bank of the Florida Keys also submitted a bid that is not recommended by City Staff or our financial analyst. The First State Bank loan would cost the City approximately an additional \$50,000 per year. Over 15 years, the City would have to pay an additional \$771,694 to First State compared to the BB&T loan. Additionally, First State Bank is requesting \$50,000 more in fees and expenses to set up the loan than BB&T.

#### **OPTIONS:**

1. Approve the bond ordinance and resolution that will allow the City to resolve the debt with FEMA/FDEM. Accepting the 15-year loan from BB&T would have no impact on rates, sewer fund reserves, and our capital improvement program.
2. The City Commission could recommend the execution of a shorter-term 10-year loan to resolve the debt. This option is not recommended by City Staff or our financial consultant because the annual payment is over \$250,000 beyond the figure we had budgeted to resolve the debt. This would therefore have an impact on future rates, our reserves, and our capital improvement program.
3. The City Commission could recommend the execution of a longer-term 20-year loan. This option is also not recommended by City Staff or our financial consultant. While the annual payments are \$50,000 lower than what we have budgeted, the loan for this period is at a higher interest rate for a longer period of time. This would result in the City paying approximately \$1.2 million more over the duration of the loan.
4. The City Commission could recommend the execution of a 15-year loan from JP Morgan at a slightly lower interest rate than BB&T, at 2.48%. This option is not recommended because the JP Morgan loan includes a clause that would allow them to increase interest rates in the event that capital charges change, or banks' cost of funds change. This could result in a sudden increase in interest rates that could be very significant to the City. If the City was willing to accept this risk, it would only result in an annual savings of around \$7,000 per year. City Staff and our financial consultant believe this minimal savings from the secured-rate BB&T loan is not worth the risk of an increase in loan interest rates that could significantly raise the total cost to the City.

5. Do not approve the bond resolution. This option is not recommended, because if the City were to pay the entire \$6,268,629.46 debt at once, it would have a significantly negative impact on sewer fund reserves, our capital improvement program, and sewer utility rates. Our capital improvement program includes items that are critical to the operation of our sewer system to minimize the chance of sewer spills in our City streets, and to ensure the flow of wastewater to the WWTP.

#### **FINANCIAL IMPACT:**

If the City were to pay the entire \$6,268,629.46 debt at once, it would assuredly result in a significantly negative impact to our sewer fund reserves. As you recall, our sewer reserves were also impacted by the North Roosevelt Project bid being approximately \$2 million above FDOT's construction estimate.

By securing a 15-year loan, the sewer utility will be able to pay back the entire debt amount at a rate that will not negatively impact the sewer fund reserves or the capital improvement plan. \$527,378 per year has already been programmed into the sewer budget in account 401-3501-535-71(principal) and account 401-3501-535-72 (interest) in anticipation of resolving this issue.

The annual payment for this loan is only approximately \$27,000 above what we had budgeted, therefore approving the 15-year loan from BB&T will not have an impact on utility rates.

#### **RECOMMENDATION:**

Staff recommends option # 1, that the City Commission approves the bond ordinance and resolution allowing the City to secure a \$6.4 million 15-year loan from BB&T so that we can resolve the sewer debt issue with FEMA/FDEM.



## The PFM Group

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November 28, 2011

## Memorandum

**To:** David Fernandez, Assistant City Manager  
**From:** David Moore, Public Financial Management  
**Re:** \$6.4 Million Sewer System Revenue Bond, Series 2011– Recommendation Memo

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On November 4, 2011, Public Financial Management, Inc. (PFM) distributed Requests for Proposals (RFP) on behalf of The City of Key West, Florida (the “City”) to identify financial institutions that could provide the City with a fixed rate, bank-qualified term loan in the form of a Sewer System Revenue Bond (the “Term Loan”). This debt will be a private placement and the City does not anticipate preparing any disclosure documents. The proposed Term Loan will be used to: (1) provide funds for the financing of sewer projects originally funded through the State of Florida Department of Emergency Management in the amount of approximately \$6.2 million; (2) fund a debt service reserve fund; and (3) to pay the associated cost of issuance. The principal of and interest on the proposed Series 2011 Bonds will be secured by the Net Revenue derived from the City’s Sewer System.

Prior to the submittal deadline (November 22, 2011) the City received four (4) proposals from the following firms: BB&T, First State Bank, JP Morgan Chase and SunTrust Bank. A summary of each proposal is included as Exhibit A.

A bank loan proposal is different than a “hard bid” proposal in that the unique terms and conditions of each proposal must be considered in order to determine the optimal financing proposal. The actual interest rate charged is the primary factor, but call provision, legal provisions and the potential for adjustment in the “fixed rate” are also critical factors. In this case the critical factors under consideration—in addition to the interest rate—are financing duration, call provisions and change in interest rate provisions.

- **Financing duration** – Historically, the City has maintained a very conservative approach to issuing debt and amortized debt as quickly as possible. The RFP allowed banks to submit proposals with duration of 10-years, 15-years and 20-years. As you would expect the interest rates increase with the duration of the financing so a shorter financing is preferred. However, as the term of the financing decreases, the annual payment increases. Based on discussions with staff, it was determined that a fifteen year financing was optimal.
- **Call provisions** – Typically, tax exempt bonds are called (can be paid off) after ten years. Banks offer a wider variety of prepayment options including: non-callable, five or ten year call options, “make-whole call” and a set redemption premium. Non-callable bonds have the lowest interest rates, but leave the City with limited flexibility. Make-whole call





provisions also generally have very low interest rates, but in certain interest rate environments, the prepayment penalty can be very large. Conversely, shorter call periods and bonds that are callable at any time offer the greatest flexibility, but typically have higher interest rates. Based on our discussions with staff, we determined that the City wants the bonds to be callable with as small of a premium as possible.

- Change in interest rate provisions – Bank loans typically include the ability to change the fixed interest rate in the event the bonds are determined to be taxable and/or the Federal corporate tax rate changes. However, in the aftermath of the financial crisis in 2007 and 2008, some banks have developed very broad change in interest rate language. The language allows the bank to increase the interest rate in the event that capital charges change and/or the banks cost of funds change. These provisions are often vague and difficult to quantify. And, the change in interest rate could be material. While bank loans with these provisions generally have lower interest rates, based on our discussions with staff we determined that the City would prefer to limit the ability of the bank to change the interest rate unless the savings was very material.

Our approach to reviewing proposals is to begin eliminating proposers and get to a list of a couple firms for final consideration. In this case, First State Bank submitted a strong proposal, but the interest rate was materially higher than other banks, so they were eliminated. BB&T, JP Morgan Chase and SunTrust all had very low interest rates, but each had different terms and conditions.

The terms and conditions for JP Morgan Chase and SunTrust Bank include the more onerous adjustment to interest rate language, while the BB&T proposal did not. Since the JP Morgan Chase interest rates were lower than the SunTrust interest rates we eliminated SunTrust Bank. This left JP Morgan Chase and BB&T as the final two banks under consideration. The 15-year rate proposal for JP Morgan Chase based on a 5-year par call was indicated at 2.48% (note this is an indication and is not locked in). The 15-year rate proposal BB&T submitted for bonds that can be called at any time with a 1% call premium is 2.65%. So the BB&T proposal is 0.17% higher, but eliminates most of the risk of the interest rate changing over time.

### **Recommendation**

After discussing these options with staff, PFM recommends that the City accept the BB&T proposal with a 15-year term. The interest rate is very low and the terms and conditions offer the City the least risk of an increase in interest rate at a later date. The 15-year term is optimal in that the debt is repaid faster than typical governmental financings (20 or 30 years), while avoiding rate increases that are higher than current projections. If the City selects a financing with a shorter term it may require larger rate increases. It is worth noting that if revenues grow more than projected over the next few years, the BB&T loan can be prepaid prior to maturity. In summary, the BB&T 15-year loan offers the City the optimal mix of low rates, favorable terms and the ability to avoid additional sewer rate increases in the future.

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SOURCES AND USES OF FUNDS

City of Key West, Florida  
Proposed Sewer System Revenue Bonds, Series 2011 (15-Year Financing)

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PRELIMINARY NUMBERS  
BB&T (1% Pre-Pay Premium 2.65%)

Dated Date           12/14/2011  
Delivery Date       12/14/2011

Sources:

Bond Proceeds:	
Par Amount	6,400,000.00
Other Sources of Funds:	
Cash Contribution	405,295.00
	<hr/>
	6,805,295.00
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Uses:

Project Fund Deposits:	
Project Fund	6,200,000.00
Other Fund Deposits:	
Reserve Fund	550,295.00
Delivery Date Expenses:	
Cost of Issuance	55,000.00
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	6,805,295.00
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Note: \*Numbers for discussion purposes only



# BOND SUMMARY STATISTICS

City of Key West, Florida  
Proposed Sewer System Revenue Bonds, Series 2011 (15-Year Financing)

## PRELIMINARY NUMBERS BB&T (1% Pre-Pay Premium 2.65%)

Dated Date	12/14/2011
Delivery Date	12/14/2011
First Coupon	04/01/2012
Last Maturity	10/01/2026
Arbitrage Yield	2.650276%
True Interest Cost (TIC)	2.650276%
Net Interest Cost (NIC)	2.650000%
All-In TIC	2.764472%
Average Coupon	2.650000%
Average Life (years)	8.719
Duration of Issue (years)	7.670
Par Amount	6,400,000.00
Bond Proceeds	6,400,000.00
Total Interest	1,478,758.89
Net Interest	1,478,758.89
Total Debt Service	7,878,758.89
Maximum Annual Debt Service	554,987.50
Average Annual Debt Service	532,448.51
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	
Total Underwriter's Discount	
Bid Price	100.000000

Bond Component	Par Value	Price	Average Coupon	Average Life	PV of 1 bp change
Serials	6,400,000.00	100.000	2.650%	8.719	4,809.10
	6,400,000.00			8.719	4,809.10

	TIC	All-In TIC	Arbitrage Yield
Par Value	6,400,000.00	6,400,000.00	6,400,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense		-55,000.00	
- Other Amounts			
Target Value	6,400,000.00	6,345,000.00	6,400,000.00
Target Date	12/14/2011	12/14/2011	12/14/2011
Yield	2.650276%	2.764472%	2.650276%

Note: \*Numbers for discussion purposes only



# BOND PRICING

City of Key West, Florida  
Proposed Sewer System Revenue Bonds, Series 2011 (15-Year Financing)

PRELIMINARY NUMBERS  
BB&T (1% Pre-Pay Premium 2.65%)

Bond Component	Maturity Date	Amount	Rate	Yield	Price
Serials:					
	10/01/2012		2.650%	2.650%	100.000
	10/01/2013	385,000	2.650%	2.650%	100.000
	10/01/2014	395,000	2.650%	2.650%	100.000
	10/01/2015	405,000	2.650%	2.650%	100.000
	10/01/2016	415,000	2.650%	2.650%	100.000
	10/01/2017	425,000	2.650%	2.650%	100.000
	10/01/2018	435,000	2.650%	2.650%	100.000
	10/01/2019	450,000	2.650%	2.650%	100.000
	10/01/2020	460,000	2.650%	2.650%	100.000
	10/01/2021	470,000	2.650%	2.650%	100.000
	10/01/2022	485,000	2.650%	2.650%	100.000
	10/01/2023	500,000	2.650%	2.650%	100.000
	10/01/2024	510,000	2.650%	2.650%	100.000
	10/01/2025	525,000	2.650%	2.650%	100.000
	10/01/2026	540,000	2.650%	2.650%	100.000
		6,400,000			

Dated Date	12/14/2011	
Delivery Date	12/14/2011	
First Coupon	04/01/2012	
Par Amount	6,400,000.00	
Original Issue Discount		
Production	6,400,000.00	100.000000%
Underwriter's Discount		
Purchase Price	6,400,000.00	100.000000%
Accrued Interest		
Net Proceeds	6,400,000.00	

Note: \*Numbers for discussion purposes only



# BOND DEBT SERVICE

City of Key West, Florida  
Proposed Sewer System Revenue Bonds, Series 2011 (15-Year Financing)

## PRELIMINARY NUMBERS BB&T (1% Pre-Pay Premium 2.65%)

Dated Date 12/14/2011  
Delivery Date 12/14/2011

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
04/01/2012			50,408.89	50,408.89	
10/01/2012			84,800.00	84,800.00	135,208.89
04/01/2013			84,800.00	84,800.00	
10/01/2013	385,000	2.650%	84,800.00	469,800.00	554,600.00
04/01/2014			79,698.75	79,698.75	
10/01/2014	395,000	2.650%	79,698.75	474,698.75	554,397.50
04/01/2015			74,465.00	74,465.00	
10/01/2015	405,000	2.650%	74,465.00	479,465.00	553,930.00
04/01/2016			69,098.75	69,098.75	
10/01/2016	415,000	2.650%	69,098.75	484,098.75	553,197.50
04/01/2017			63,600.00	63,600.00	
10/01/2017	425,000	2.650%	63,600.00	488,600.00	552,200.00
04/01/2018			57,968.75	57,968.75	
10/01/2018	435,000	2.650%	57,968.75	492,968.75	550,937.50
04/01/2019			52,205.00	52,205.00	
10/01/2019	450,000	2.650%	52,205.00	502,205.00	554,410.00
04/01/2020			46,242.50	46,242.50	
10/01/2020	460,000	2.650%	46,242.50	506,242.50	552,485.00
04/01/2021			40,147.50	40,147.50	
10/01/2021	470,000	2.650%	40,147.50	510,147.50	550,295.00
04/01/2022			33,920.00	33,920.00	
10/01/2022	485,000	2.650%	33,920.00	518,920.00	552,840.00
04/01/2023			27,493.75	27,493.75	
10/01/2023	500,000	2.650%	27,493.75	527,493.75	554,987.50
04/01/2024			20,868.75	20,868.75	
10/01/2024	510,000	2.650%	20,868.75	530,868.75	551,737.50
04/01/2025			14,111.25	14,111.25	
10/01/2025	525,000	2.650%	14,111.25	539,111.25	553,222.50
04/01/2026			7,155.00	7,155.00	
10/01/2026	540,000	2.650%	7,155.00	547,155.00	554,310.00
	6,400,000		1,478,758.89	7,878,758.89	7,878,758.89

Note: \*Numbers for discussion purposes only



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BOND DEBT SERVICE

City of Key West, Florida  
Proposed Sewer System Revenue Bonds, Series 2011 (15-Year Financing)

PRELIMINARY NUMBERS  
BB&T (1% Pre-Pay Premium 2.65%)

Dated Date 12/14/2011  
Delivery Date 12/14/2011

Period Ending	Principal	Coupon	Interest	Debt Service
10/01/2012			135,208.89	135,208.89
10/01/2013	385,000	2.650%	169,600.00	554,600.00
10/01/2014	395,000	2.650%	159,397.50	554,397.50
10/01/2015	405,000	2.650%	148,930.00	553,930.00
10/01/2016	415,000	2.650%	138,197.50	553,197.50
10/01/2017	425,000	2.650%	127,200.00	552,200.00
10/01/2018	435,000	2.650%	115,937.50	550,937.50
10/01/2019	450,000	2.650%	104,410.00	554,410.00
10/01/2020	460,000	2.650%	92,485.00	552,485.00
10/01/2021	470,000	2.650%	80,295.00	550,295.00
10/01/2022	485,000	2.650%	67,840.00	552,840.00
10/01/2023	500,000	2.650%	54,987.50	554,987.50
10/01/2024	510,000	2.650%	41,737.50	551,737.50
10/01/2025	525,000	2.650%	28,222.50	553,222.50
10/01/2026	540,000	2.650%	14,310.00	554,310.00
	6,400,000		1,478,758.89	7,878,758.89

Note: \*Numbers for discussion purposes only



# AGGREGATE DEBT SERVICE

City of Key West, Florida  
Proposed Sewer System Revenue Bonds, Series 2011 (15-Year Financing)

PRELIMINARY NUMBERS  
BB&T (1% Pre-Pay Premium 2.65%)

Period Ending	Proposed Sewer System Revenue Bonds, Series 2011 (15-Year Financing)	Series 2003	State Revolving Loan (Subordinate )	Aggregate Debt Service
10/01/2012	135,208.89	2,012,767.50	366,367	2,514,343.39
10/01/2013	554,600.00	2,013,317.50	366,367	2,934,284.50
10/01/2014	554,397.50	2,011,087.50	366,367	2,931,852.00
10/01/2015	553,930.00	2,016,537.50	366,367	2,936,834.50
10/01/2016	553,197.50	2,014,850.00	366,367	2,934,414.50
10/01/2017	552,200.00	2,010,012.50	366,367	2,928,579.50
10/01/2018	550,937.50	2,012,025.00	366,367	2,929,329.50
10/01/2019	554,410.00	2,015,362.50	366,367	2,936,139.50
10/01/2020	552,485.00	2,014,162.50	366,367	2,933,014.50
10/01/2021	550,295.00	2,020,412.50	366,367	2,937,074.50
10/01/2022	552,840.00	2,013,687.50	183,185	2,749,712.50
10/01/2023	554,987.50	2,009,412.50		2,564,400.00
10/01/2024	551,737.50	2,007,375.00		2,559,112.50
10/01/2025	553,222.50	2,010,156.26		2,563,378.76
10/01/2026	554,310.00	2,014,437.50		2,568,747.50
	7,878,758.89	30,195,603.76	3,846,855	41,921,217.65

Note: \*Numbers for discussion purposes only



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COST OF ISSUANCE

City of Key West, Florida  
Proposed Sewer System Revenue Bonds, Series 2011 (15-Year Financing)

PRELIMINARY NUMBERS  
BB&T (1% Pre-Pay Premium 2.65%)

Cost of Issuance	\$/1000	Amount
Bond Counsel	3.90625	25,000.00
Bond Counsel Expenses	0.70313	4,500.00
Financial Advisor	2.96875	19,000.00
Financial Advisor Expenses	0.15625	1,000.00
Bank Counsel	0.70313	4,500.00
Miscellaneous	0.15625	1,000.00
	8.59375	55,000.00

Note: \*Numbers for discussion purposes only





# Bryant Miller Olive

Attorneys at Law  
101 North Monroe Street  
Suite 900  
Tallahassee, FL 32301  
Tel 850.222.8611  
Fax 850.222.8969  
www.bmoalaw.com

November 2, 2011

Mr. Jim Scholl, City Manager  
The City of Key West  
525 Angela Street  
Key West, Florida 33040

Re: Proposed issuance of Sewer System Revenue Note, Series 2011

Dear Jim:

On October 25, 2011, you requested that we respond to certain questions regarding the issuance of the referenced debt, the proceeds of which would be used to finance a payment by the City to the State of Florida Department of Emergency Management in the amount of \$6,268,629.46 for funds that FEMA de-obligated for sewer system purposes.

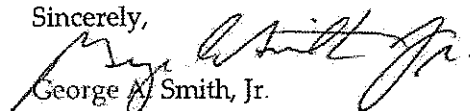
In response to the first question, the authority to borrow \$23 million authorized by the City Commission Bond Referendum Resolution 99-346 and the voter approval thereof (the "Bond Referendum") survives the passage of time until the point that the issuance of debt reaches the \$23 million debt limitation.

The loan to the City from the Department of Environmental Protection (State Revolving Fund) constitutes a borrowing that must be approved by voters and the amount borrowed thereunder applies against the authority provided under the successful Bond Referendum. However, we understand that no other debt has been issued that would apply against such authority. Therefore, sufficient authority exists under the Bond Referendum to allow for the issuance of the Series 2011 Note.

The City Commission Bond Anticipation Notes Ordinance No. 00-6 may not be used to authorize the Series 2011 Note. At the request of the City, we are drafting an ordinance to authorize the issuance of the Series 2011 Note.

Please let me know if you need any further review.

Sincerely,

  
George A. Smith, Jr.

# CITY OF KEY WEST

## Sewer System Revenue Bond, Series 2011

NOVEMBER						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

DECEMBER						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

### Financing Timetable

<u>Date</u>	<u>Event</u>	<u>Responsibility</u>
November 1	Distribute Timetable	FA
November 2	Distribute 1 <sup>st</sup> Draft of Bank RFP	FA
November 3	Comments due on RFP	FA
November 4	<b>Distribute Bank Loan RFP to potential lenders</b>	<b>FA</b>
November 8	Distribute 1 <sup>st</sup> Draft of Ordinance & Resolution	BC
November 11	Comments due on 1 <sup>st</sup> Draft of Ordinance & Resolution	All
<b>November 15</b>	<b>City Commission Meeting – 1<sup>st</sup> Reading of Ordinance</b>	<b>City</b>
<b>November 22</b>	<b>RFP Responses Due</b>	<b>City, FA</b>
November 23	PFM Recommendation on Bank Loan Provider to City	FA
<b>December 6</b>	<b>City Commission Meeting – Approval of Ordinance &amp; Resolution</b>	<b>City</b>
December 13	Pre-Closing	All
December 14	Loan Closing	All

#### Legend

<b>City</b>	City of Key West, Florida
<b>BC</b>	Bond Counsel – Bryant Miller Olive P.A.
<b>FA</b>	Financial Advisor - Public Financial Management, Inc.
<b>Bank</b>	TBD
<b>All</b>	Working Group – All the above

**CITY OF KEY WEST**  
**Sewer System Revenue Bond, Series 2011**

***Working Group Distribution List***

**ISSUER**

**City of Key West, Florida**

*Overnight Delivery/Physical Address:*

525 Angela Street  
Key West, FL 33041-1409

*Mailing Address:*

P.O. Box 1409  
Key West, FL 33041-1409

Jim Scholl  
*City Manager*

(305) 809-3888  
Fax – (305) 809-3886  
[jscholl@keywestcity.com](mailto:jscholl@keywestcity.com)

Mark Finigan  
*Assistant City Manager - Admin*

[mfinigan@keywestcity.com](mailto:mfinigan@keywestcity.com)

E. David Fernandez  
*Assistant City Manager - Operations*

[dfernand@keywestcity.com](mailto:dfernand@keywestcity.com)

Shawn Smith, Esq.  
*City Attorney*

(305) 809-3770  
[sdsmith@keywestcity.com](mailto:sdsmith@keywestcity.com)

626 Josephine Parker Drive - Suite 201  
Key West FL 33040

Roger Wittenberg  
*Director, Finance Department*

(305) 809-3822  
Fax – (305) 809-3806  
[rwittenb@keywestcity.com](mailto:rwittenb@keywestcity.com)

**BOND COUNSEL**

**Bryant Miller Olive**

101 North Monroe St., Suite 900  
Tallahassee, FL 32301  
(850) 222-8611  
Fax – (850) 222-8969

George A. Smith, Jr.  
*Esquire*

[George@bmlaw.com](mailto:George@bmlaw.com)

Jason Breth  
*Esquire*

[jbreth@bmlaw.com](mailto:jbreth@bmlaw.com)

One Tampa City Center, Suite 2700  
Tampa, FL 33602

Duane Draper  
*Esquire*

(813) 273-6677  
Fax – (813) 223-2705  
[ddraper@bmlaw.com](mailto:ddraper@bmlaw.com)

**CITY OF KEY WEST**  
**Sewer System Revenue Bond, Series 2011**

**FINANCIAL ADVISOR**

**Public Financial Management Inc.**

Lincoln Plaza

300 S. Orange Avenue, Suite 1170

Orlando, Florida 32801

David Moore

*Managing Director*

(407) 648-2208

Fax – (407) 648-1323

[moored@publicfm.com](mailto:moored@publicfm.com)

Nicklas Rocca

*Consultant*

(407) 648-2208

Fax – (407) 648-1323

[roccan@pfin.com](mailto:roccan@pfin.com)

**BANK LOAN PROVIDER**

**TBD**

**BANK COUNSEL**

**TBD**

# **CITY OF KEY WEST, FLORIDA**



## **REQUEST FOR PROPOSALS**

**FOR**

**SEWER SYSTEM REVENUE BOND  
SERIES 2011**

**BANK-QUALIFIED TERM LOAN**

**Due Date: November 22, 2011  
Due Time: 2:00 P.M. ET**

**REQUEST FOR PROPOSALS  
SEWER SYTEM REVENUE BOND, SERIES 2011  
BANK-QUALIFIED TERM LOAN  
CITY OF KEY WEST, FLORIDA**

**I. INTRODUCTION**

**A. Objectives**

Public Financial Management, Inc. (PFM) submits this request for proposals (RFP) on behalf of The City of Key West, Florida (the "City") to identify the institution that can provide the City with a fixed rate, bank-qualified term loan in the form of a Sewer Revenue Bond (the "Term Loan") at the lowest overall borrowing cost, pursuant to certain conditions as determined by the City in an amount not to exceed \$6,400,000. The refunding will be a private placement and the City does not anticipate preparing any disclosure documents.

The proposed term loan will be used to: (1) provide funds for the reimbursement of sewer projects originally financed through the State of Florida Department of Emergency Management; and (2) to pay the associated cost of issuance. The principal of and interest on the proposed Series 2011 will be secured by a pledge of and lien on, the Pledged Revenues, comprised of the Net Revenue derived from the Sewer Facilities. The City will covenant in the resolution authorizing the Term Loan not to issue any additional bonds with a lien on the Pledged Revenues that is prior to the lien of the Term Loan.

**B. Proposal Instructions**

**1. Hard Copy or Electronic Proposal**

A hard copy or an electronic response to this RFP should be submitted **on or before 2:00 P.M. ET, November 22, 2011** to the attention of:

David Moore  
[moored@pfm.com](mailto:moored@pfm.com)  
300 South Orange Avenue, Suite 1170  
Orlando, Florida 32801  
(407) 648-2208

**THE CITY RESERVES THE RIGHT TO REJECT ANY AND ALL PROPOSALS, TO WAIVE ANY INFORMALITIES OR IRREGULARITIES IN ANY PROPOSALS RECEIVED, OR TAKE ANY OTHER ACTIONS THAT MAY BE DEEMED TO BE IN THE BEST INTEREST OF THE CITY.**

## 2. Proposal Response

Each proposal should address all pertinent areas and be specific. All conditions should be clearly stated.

Failure to disclose substantive terms, conditions and covenants may be considered cause for the proposer's proposal to be rejected by the City.

## 3. Questions, Additional Information

**Contact with City's personnel or consultants other than PFM, the City's Financial Advisor, regarding this Request for Proposals may be grounds for elimination from the selection process.**

**The Proposer shall examine all proposal documents and shall judge all matters relating to the adequacy of such documents. Any inquiries, suggestions or requests concerning clarification or solicitation for additional information shall be in writing to the City's Financial Advisor, Public Financial Management, Inc., via e-mail to [moored@pfm.com](mailto:moored@pfm.com) and [roccan@pfm.com](mailto:roccan@pfm.com). The City shall not be responsible for oral interpretations given by any employee or its representative.**

## 4. Tentative Schedule

The City will attempt to adhere to the following schedule:

November 4, 2011	RFP Issued
November 22, 2011	Written, e-mailed or faxed responses due prior to 2:00 P.M. ET
November 29, 2011	Selection of Term Loan Provider (pending Commission approval)
December 6, 2011	Award of the Term Loan by City Commission
December 14, 2011	Approximate closing on Term Loan

The City reserves the right to alter scheduled dates if necessary.

## C. Security for Term Loan

The principal of and interest on the proposed Series 2011 will be payable solely from and secured by a pledge of the Net Revenues of the System. The Net Revenues are pledged by the City for the equal and ratable benefit and security of the Series 2011 Bonds and any Additional Parity Obligation.

#### D. Structure of the Financing

The following describes the City's requirements in establishing the Term Loan:

1. Amount: Not to exceed \$6,400,000.
2. Final Maturity: Bidder has the option to provide the City with a 10-year, 15-year and/or 20-year financing.
3. Estimated, subject to change, principal by maturity:

	<u>Estimated Amortization Schedule</u>		
	<u>10-Year Financing</u>	<u>15-Year Financing</u>	<u>20-Year Financing</u>
12/1/2012	545,000	325,000	220,000
12/1/2013	580,000	350,000	235,000
12/1/2014	600,000	360,000	240,000
12/1/2015	615,000	375,000	250,000
12/1/2016	630,000	385,000	260,000
12/1/2017	650,000	400,000	270,000
12/1/2018	665,000	410,000	280,000
12/1/2019	685,000	425,000	290,000
12/1/2020	705,000	435,000	300,000
12/1/2021	725,000	450,000	310,000
12/1/2022		465,000	320,000
12/1/2023		480,000	330,000
12/1/2024		495,000	340,000
12/1/2025		515,000	355,000
12/1/2026		530,000	365,000
12/1/2027			380,000
12/1/2028			395,000
12/1/2029			405,000
12/1/2030			420,000
12/1/2031			435,000
Total	6,400,000	6,400,000	6,400,000

4. **Fixed, tax-exempt rate on a bank qualified basis.** The rate quoted may not exceed the maximum rate permitted under Florida Statute 215.84 applicable at the time of sale.
5. **Repayment Provisions:** Interest payments on the outstanding principal balance of the Term Loan will be calculated on a 30/360-day basis and will be paid semiannually on June 1 and December 1, of each year, beginning June 1, 2012. The principal amount of the Term Loan will be payable annually on December 1 of each year beginning December 1, 2012, through the final maturity of the Term Loan.
6. All of the covenants of Resolution shall apply to the Note.
7. **Prepayment Options:** Please specify any prepayment parameters. The City would prefer a proposal that does not entail a prepayment penalty.



## **E. Provisos**

The City reserves the right to reject proposals with terms and conditions different than those included in the Bond Resolution.

1. At the closing of the Bond, the proposer will be required to make certain certifications, including but not limited to certifications that it:
  - (a) is not acting as a broker or other intermediary, and is purchasing the Bond as an investment for its own account and not with a present view to a resale or other distribution to the public;
  - (b) is a bank, trust company, savings institution, insurance company, dealer, investment company, pension or profit-sharing trust, or qualified institutional buyer as contemplated by Section 517.061(7), Florida Statutes;
  - (c) is not purchasing the Bond for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes; and
  - (d) is an "accredited investor" within the meaning of the Securities Act of 1933, as amended, and Regulation D thereunder.
  - (e) The Bond will have minimum denominations of \$100,000 and cannot be transferred in denomination less than such amount.

## **II. EVALUATION OF PROPOSALS - CRITERIA**

Proposals will be evaluated on the basis of cost and compliance with the proposed structure and terms of the Term Loan as outlined in this RFP.

### **A. Proposal Format**

In order to assist the City in reviewing proposals, each proposal shall be prepared utilizing the following format and headings:

1. Contact Information - State the legal name of the financial institution or firm, current principal business address, contact person, telephone and facsimile numbers.
2. Interest Rate (Bank Qualified) - State the fixed rate being proposed based on the Repayment Provisions.

Please provide two (2) **INTEREST RATE** scenarios:

- (1) An interest rate that will be locked and set as of the actual date of the RFP response until closing and;
- (2) An actual rate that will be set three (3) days prior to the closing of the Term Loan based on a formula provided. The bank qualified, fixed rate shall be expressed as a function of the yield for the U.S. Government Treasury obligation (or other nationally recognized index) having a maturity closest to the weighted average maturity of the Term Loan.

The City reserves the right to select the more advantageous rate as of the date of closing. The award of the RFP does not obligate the City to close on the Bond and there will be no penalty for locking a rate until such time as the City has adopted a Resolution approving the issuance of the Bond.

**Interest Rates** - State the fixed rates being proposed with or without Prepayment Penalty Options. Please use the grid below to outline your proposed interest rate quote(s) and/or state your most favorable structure and quote.

Series 2011 - Fixed BQ Tax-Exempt Rate		
<u>Option</u>	Bank Qualified <u>Rate Quote*</u>	<u>Rate Calculation</u>
10-Year Maturity (12/1/2021)		
15-Year Maturity (12/1/2026)		
20-Year Maturity (12/1/2031)		

\*Rate quotes should be specified as of November 17, 2011. Please indicate whether the rate quoted will be reset prior to closing or held through closing on or about December 14, 2011.

**The bank qualified fixed rates shall be expressed as a function of the yield for the U.S. Government Treasury obligation (or other nationally recognized index) having a maturity closest to the weighted average maturity of the Term Loan.**

3. Fees and Expenses - Describe in detail all fees and expenses which the City will be responsible to pay. The amounts stated in the proposal shall represent the maximum amounts payable to the proposer by the City. All fees and expenses in excess of those stated in the proposal shall be the sole responsibility of the proposer and will not be paid or reimbursed by the City. The City's Bond Counsel, Bryant Miller Olive P.A. will deliver an opinion regarding the excludability of interest from gross income for federal income tax purposes on the Term Loan and on the Term Loan being a qualified tax-exempt obligation under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.
4. Prepayment Provisions – Please outline any prepayment provisions.
5. Conditions - Provide a listing of all conditions, terms or restrictions, other than those specified in this RFP, which would be included in your commitment to provide the Term Loan.

### **III. INSTRUCTIONS TO PROPOSERS**

- A. Proposers shall thoroughly examine and be familiar with the proposal specifications. Failure of any proposer to receive or examine this document shall in no way relieve any proposer of obligations pertaining to this proposal or the subsequent contract.
- B. Any changes or modifications to the proposal specifications can result in the rejection from the proposal process as not being responsive to this RFP.
- C. The responsibility for faxing, e-mailing or delivery of the proposal to the City's Financial Advisor on or before the specified date and time will be solely and strictly the responsibility of the proposer. The City or its Financial Advisor will in no way be responsible for delays caused by transmission of the proposal or a delay caused by any other occurrence.
- D. The response deadline shall be strictly observed. Under no circumstances will a proposal delivered after the time specified be considered. Such proposals will be returned to the proposer unopened.
- E. Proposers will not be allowed to withdraw or modify their proposals for a period of ninety (90) days after the opening time and date for indexed rates.
- F. The City reserves the right to reject the proposal of any proposer who has previously failed in the proper performance of a contract or to deliver on time other contracts similar in nature, or who is not in a position to perform properly under this contract.
- G. The City reserves the right to inspect all facilities of the proposer in order to make a determination as to their capabilities.
- H. Federal, state, county and local laws, ordinances, rules and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the proposer will in no way be a cause for relief from responsibility.
- I. No successful proposer may assign any portion of the contractual agreement between the parties without prior written authorization by the City.
- J. Changes to the RFP may be made by and at the sole discretion of the City.
- K. Warranties - The proposer, in submission of its proposal, warrants to the City that it will comply with all applicable federal, state and local laws, regulations and orders in providing the services under the proposed documents.
- L. Collusion - The Proposer, by affixing its signature to this proposal, certifies that its proposal is made without previous understanding, agreement, or connection either with any previous firms or corporations offering a Proposal for the same items, or with

the City. The Proposer also certifies that its proposal is in all respects fair, without outside control, collusion, fraud or otherwise illegal action.

- M. Discrimination: Pursuant to Section 287.134(2)(a), Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit a proposal on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.
- N. Each Proposer shall complete the enclosed Public Entities Crime Affidavit, Signature Form and Hold Harmless Agreement and shall submit the executed forms with their proposal. City considers the failure of the Proposer to submit these forms to be a major irregularity and shall be cause of rejection of submissions.

#### **IV. OTHER INFORMATION**

- A. The City reserves the right to accept or reject any and all proposals, to waive any irregularities or informalities in any proposal and to accept or reject any items or combination of items. The award will be to the institution whose response complies with all of the requirements set forth in this RFP and whose proposal, in the sole opinion of the City, is best taking into consideration all aspects of the proposer's response.
- B. In the event that the successful proposer does not execute a contract within a timeframe acceptable to the City, the City may give notice of intent to award the proposal to the next most qualified proposer or to call for new proposals and may proceed to act accordingly.



STATE OF FLORIDA

# DIVISION OF EMERGENCY MANAGEMENT

RICK SCOTT  
Governor

BRYAN W. KOON  
Director

September 22, 2011

**RECEIVED**

SEP 28 2011

CITY MANAGER

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Mr. Jim Scholl, City Manager  
City of Key West  
P.O. Box 1409  
Key West, FL 33041

Re: Repayment of Stafford Act Funds Owed  
DR-1306 (Hurricane Irene)

Dear Mr. Scholl:

Attached for your review are copies of correspondence between the Division of Emergency Management (Division) and the City of Key West regarding overpayments of Stafford Act reimbursement funding arising out of the Hurricane Irene disaster (DR-1306). It is the belief of the Division that by this point in time the City of Key West is familiar with all background issues that have led to this invoice which requests the repayment of \$6,268,629.48. We request your review of these documents and look forward to receiving the refund check so that we may close out this project with FEMA.

Please be aware that the funding agreement executed on January 20, 2000, between the City of Key West and the Department of Community Affairs requires that the City (as subgrantee) reimburse the above-mentioned overpayment. Specifically, the Division of Emergency Management (as Grantee) is basing this request for reimbursement on the following section of the executed funding agreement:

*Section 11 - Recovery of Funds* - "If the final inspection, audit or other review by FEMA, the State, or any other authorized entity determines that payment made under this Agreement exceeds the amount of actual eligible costs, the Subgrantee shall, within forty-five (45) days of receipt of the determination notice, repay the Grantee the amount determined to be in excess of the actual costs."

Attached to this letter please find a repayment plan that has been reviewed and approved by the Division's Senior Management, which we believe offers a fair resolution to this issue. As FEMA withdraws funding from the State's SMARTLINK account as soon as a de-obligation is processed, your delinquency in returning these overpaid funds has created a deficit which is currently affecting the State's ability to repay other applicants from the same storm. In an effort to be fair to all of our applicants, we must request that you satisfy this delinquency immediately; executing the enclosed repayment plan is the first step towards clearing this debt.

Additionally, the Grantee would at this time point out the following enforcement mechanisms that arise from the above-referenced funding agreement, should this overpayment not be timely addressed by the City of Key West:

1. **The City of Key West may not be eligible for further Stafford Act reimbursement (including costs incurred in future disasters) until the deficit is corrected.** Such action is authorized by Section 24(f) of the funding agreement, which states that "... If Subgrantee fails to repay said funds, then Subgrantee authorizes the Grantee to recoup said funds from funding otherwise available under this Agreement or under any other grant Agreement with Subgrantee administered by the Grantee.
2. **The Division may seek Judicial or other appropriate remedial actions to compel reimbursement.** Such action is authorized by Section 24(b) (2) of the funding agreement.

Obviously it is in the best interests of both the City of Key West and the State of Florida for reimbursement of this invoice to be corrected as quickly and smoothly as possible. Please immediately execute the enclosed repayment plan or make the check in the amount of \$6,268,629.48 payable to "Division of Emergency Management - Cashier" and mail to the address below:

Bryan W. Koon, Governors Authorized Representative  
Division of Emergency Management - Cashier  
Attn: Tamara Francis  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100  
CC: Kevin Adkison, State Public Assistance Officer

If you have any questions or should you require any further information, please contact Ms. Cathy Day, Grant Specialist at (850) 487-1312, or via email to: [cathy.day@em.myflorida.com](mailto:cathy.day@em.myflorida.com).

Sincerely,



 Bryan W. Koon  
Governors Authorized Representative

BWK/LCL/wso

Attachments

Contract #: 00-RM-W\*-11-54-02-118  
Disaster Declaration #: 1306 Hurricane Irene  
Subgrantee: City of Key West  
PW#: 35-2, 322-2, 323-2, 423-2, 529-2, OIG Audit # DA-25-03  
Category of PA: Multiple

**PUBLIC ASSISTANCE PROGRAM**  
**REPAYMENT PLAN AGREEMENT**

THIS AGREEMENT is entered into on this 23rd day of September, 2011, between the Florida Division of Emergency Management ("FDEM" or "Grantee") and the City of Key West ("Subgrantee") to facilitate the repayment of funds by Subgrantee to Grantee.

WHEREAS, FDEM provides disaster assistance to government entities and certain nonprofit organizations (collectively "Subgrantees") through the federally funded Disaster Grants – Public Assistance ("PA") Program of the Federal Emergency Management Agency ("FEMA"); and

WHEREAS, FDEM's Bureau of Recovery administers the PA program and assists Subgrantees in returning damaged or destroyed public facilities, infrastructure, and services to pre-disaster conditions; and

WHEREAS, after the interim or final inspection of a project it is sometimes determined that there was an over-allocation of grant funds or, in some cases, projects are de-obligated completely after the FDEM Public Assistance Program has done everything reasonably possible to assist the Subgrantees with maximizing all allowed benefits from this program; and

WHEREAS, it can be difficult for some governmental agencies and nonprofit corporations to access sufficient funds to repay FDEM/FEMA in a timely manner.

NOW THEREFORE, in order to facilitate repayments by Subgrantees and thus ensure the availability of funds for other applicants, FDEM has developed this Public Assistance Program Repayment Plan ("PAPRP"). In consideration of the mutual promises and conditions contained herein, the parties to this PAPRP agree to the following terms:

1. **Disaster Funding Agreement**: Subgrantee acknowledges that it executed a Disaster Funding Agreement for Hurricane Irene, Disaster Declaration # 1306, and a copy of that Agreement is attached hereto as Exhibit A.
2. **Funds Owed**: Subgrantee agrees that it is obligated to return \$6,268,629.48 in previously disbursed PA funds to FDEM as Grantee for FEMA.
3. **Repayment Terms**: Subgrantee agrees that it will repay the PA funds to FDEM as follows:

- a. For Subgrantees obligated to return \$1,000,000.00 or more in previously disbursed PA funds to FDEM, payments shall be made in twelve (12) equal monthly payments of \$522,385.79 that will begin on November 1st, 2011, and will be subsequently made prior to the 5<sup>th</sup> day of every month until the total amount has been returned.
  - b. For Subgrantees obligated to return less than \$1,000,000.00 in previously disbursed PA funds to FDEM, said funds are to be repaid in equal payments of N/A within the current State Fiscal Year or within 6 months, whichever period is longer, from the original date of this agreement.
4. **Interest:** FDEM will not include a penalty or processing fee and no interest will be charged on the outstanding funds. Any interest that may be charged to FDEM as the Grantee from FEMA will be passed on to the Subgrantee.
5. **Payment Address:** All payments from Subgrantee should be mailed to the following address for receipt by FDEM prior to the 5th day of the month:

Tamara Francis, Cashier  
Division of Emergency Management  
2555 Shumard Oak Blvd.  
Tallahassee, Florida 32399-2100

6. **Late Payments:**
  - a. For Subgrantees obligated to return \$1,000,000.00 or more in previously disbursed PA funds to FDEM, all payments received after the 15<sup>th</sup> day of the month shall be deemed late. After three late payments, this Agreement will terminate and the entire amount owed will become due immediately.
  - b. For Subgrantees obligated to return less than \$1,000,000.00 in previously disbursed PA funds to FDEM, all payments received after the 15<sup>th</sup> day of the month shall be deemed late. After three late payments, this Agreement will terminate and the entire amount owed will become due immediately.
7. **Failure to Pay:** If Subgrantee does not make the payments as agreed and specified in this Agreement, then any payments due the Subgrantee for the same disaster will be withheld. Additionally, FDEM reserves the right to apply obligated funds from other disasters to correct the deficiency in Subgrantee's account in accordance with such provisions contained in Subgrantee's executed funding agreement. Further, the FDEM reserves the right to initiate legal action against the Subgrantee to recover the PA funds at issue.



8. **Descriptive Headings:** The descriptive headings used herein are for convenience of reference only and they are not intended to have any affect whatsoever in determining the rights or obligations under this PAPRP.
9. **Governing Law:** This Public Assistance Program Repayment Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Florida. Venue for any legal action related to this Agreement will be in Leon County, Florida.
10. **Additional Repayment Plans:** The amount stated in this repayment plan reflects current account balances for the declaration(s) listed. Obligation of future project worksheet versions may result in amendments to this Repayment Plan or additional Repayment Plans.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their undersigned duly authorized officials.

**Subgrantee**

**Florida DEM**

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
[Print Name and Title]

Bryan Koon, Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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TALLAHASSEE  
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June 9, 2011

William S. Owens  
Interim Bureau Chief  
Recovery Bureau  
Florida Division of Emergency Management  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100

Re: FEMA-1306-DR-FL  
PA I.D. #087-36550-00/PWs 423 and 529

Dear Mr. Owens:

This firm represents the City of Key West with respect to the Division's demand for reimbursement of \$6,659,104.46 that FEMA has deobligated in connection with Hurricane Irene. While the City continues to believe these monies were spent appropriately in the public interest for essential public infrastructure, the City would like to have a constructive dialogue with the Division regarding an amicable resolution to the Division's demands.

Recall that we met in 2011 with the former Bureau Chief and agency counsel to discuss resolution of this matter. There has been some follow up conversation with agency counsel about the City's desire to settle FEMA's claim on reasonable, fiscally responsible terms. The terms that have been discussed include:

- payment of the federal monies at issue (\$5,715,676);
- a substantial down payment on that amount (approximately \$1 million);
- a reasonable payment plan;
- without interest.

While the City had no further discussions with the Division about such a resolution in 2011, my client welcomes the opportunity to continue these discussions with you along these lines here again proposed.

Sincerely,

Peter Antonacci

## **FITCH AFFIRMS KEY WEST, FLORIDA'S SEWER SYS REVS AT 'AA-'; OUTLOOK STABLE**

Fitch Ratings-Austin-10 November 2011: Fitch Ratings affirms the following Key West, Florida (the city) bonds:

—\$22.8 million in outstanding sewer system revenue bonds, series 2003 at 'AA-'.

The Rating Outlook is Stable.

### **SECURITY**

The bonds are secured by a pledge of net sewer system (the system) revenues excluding connection fees.

### **KEY RATING DRIVERS**

**Sound Financial Profile:** System financial performance remains strong, projected to remain over 1.8 times (x) all-in coverage, in spite of modest declines in coverage over the past five years.

**High Debt Load:** Leverage ratios are above the category 'AA' rating medians and projected to remain high with an anticipated debt issuance to repay a Federal Emergency Management Agency (FEMA) grant. Rapid debt amortization helps to somewhat mitigate the system's high debt load.

**Limited Rate Flexibility:** Charges are high as a percentage of median household income (MHI), though comparable to rates in neighboring communities in the Florida Keys.

**Tourism Based Economy:** The city relies heavily on tourism and on the military.

**Exposure to Severe Weather:** The city's continued exposure to severe weather could adversely affect system assets and tourism.

### **CREDIT PROFILE**

Although total coverage has declined annually from a high of 3.0x in fiscal 2006, financial operations for the system remain sound. The system's senior-lien debt service coverage for fiscal 2010 was strong at 2.9x. Including the system's subordinate-lien state revolving fund loan payment, total coverage was still strong at 2.5x for the year. System financial projections show debt service coverage remaining above 1.8x through fiscal 2016.

Liquidity levels remain robust with \$6.9 million in available reserves equal to nearly 420 days of cash on hand in fiscal 2010. While system capital needs remain moderate and the city continues to fund ongoing capital projects from pay-go, Fitch expects the system's liquidity position to remain favorable.

The system's five-year capital improvement plan (CIP) totals a manageable \$20.5 million. The city plans to entirely cash-fund the CIP. Planned improvements include a force main project which will improve capacity flows throughout the system and projects for system rehabilitation and repair. Although the city does not anticipate issuing any debt for capital projects, a grant (in the approximate amount of \$6.2 million) the city received from hurricane damage in 1999 requires repayment. The city is looking to issue system debt in the next year to repay the grant. System debt per customer is currently 1.4x category 'AA' rating median levels; the median for outstanding debt per customer is \$1,502. With the anticipated issuance, Key West's debt per customer is projected to increase to approximately \$2,280. Thus, debt levels are anticipated to remain elevated with the potential debt issuance plans.

The system experienced an environmental crisis in 1999 when Hurricane Irene hit Florida. Leaky

sewer lines caused the near-shore water pollution that led to the closure of most city beaches from May 1999 to May 2000. The city spent \$67 million on consent order capital improvements to rebuild the system, replace the system's ocean outfall discharge method with a class V deep injection well and upgrade the wastewater treatment plant. A combination of grants, including a FEMA grant, loans, and a bond anticipation note were used to help fund the improvements. FEMA is now requiring repayment of a portion of the grant used for system repairs, contending that a section of pipe it funded was already damaged. The city appealed but is having to repay the grant and is now working out a payment plan.

The city's wastewater treatment plant has a designed treatment capacity of 10 million gallons per day (mgd). Historical average daily flows have been between 4-5 mgd or 50% of capacity levels. The system's national pollutant discharge elimination system permit was recently renewed and expires in 2014. There are no regulatory issues to report.

The system has limited rate flexibility as charges are relatively high at 1.2% of MHI. Sewer rates have been raised about 2.9% annually over the past five years. Projected rates are expected to increase 2.4% for fiscal 2012 then rise to 2.8% annually from fiscal 2013 to 2016. In comparison to neighboring communities, rates are comparable for the Florida Keys, which are above state and national averages. The system remains under the private management of Operations Management International (OMI), which has had a 20-year history of operating the wastewater system.

The system serves the city of Key West, the southernmost city in the continental U.S. The city's population of approximately 24,000 has declined by about 1% annually over the 2006 to 2009 period, although projected population and customer base are expected to remain flat. The city's economy relies heavily on tourism and military (both the U.S. Navy and U.S. Coast Guard have a presence). The city's 2009 median income levels were 110% above the state average.

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Additional information is available at '[www.fitchratings.com](http://www.fitchratings.com)'. Please review and approve the minor attached edits. If there are no additional changes then this can go right to being submitted for business approval

In addition to the sources of information identified in Fitch's Revenue-Supported Rating Criteria, this action was additionally informed by information from Creditscope.

Applicable Criteria and Related Research:

--'Revenue-Supported Rating Criteria', dated June 20, 2011;  
--'U.S. Water and Sewer Revenue Bond Rating Criteria', dated Aug. 10, 2011;  
--'2010 Water and Sewer Medians', dated Jan. 18, 2011;  
--'2010 Water and Sewer Sector Outlook', dated Jan. 18, 2011

Applicable Criteria and Related Research:

2010 Water and Sewer Sector Outlook

[http://www.fitchratings.com/creditdesk/reports/report\\_frame.cfm?rpt\\_id=499482](http://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=499482)

2010 Water and Sewer Medians

[http://www.fitchratings.com/creditdesk/reports/report\\_frame.cfm?rpt\\_id=509146](http://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=509146)

U.S. Water and Sewer Revenue Bond Rating Criteria

[http://www.fitchratings.com/creditdesk/reports/report\\_frame.cfm?rpt\\_id=647331](http://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=647331)

Revenue-Supported Rating Criteria

[http://www.fitchratings.com/creditdesk/reports/report\\_frame.cfm?rpt\\_id=637130](http://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=637130)

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